



Enforcement staff of the Alberta Utilities Commission

**Settlement Agreement with Green Block Mining Corp.,
formerly Link Global Technologies Inc.**

December 21, 2023

Alberta Utilities Commission

Decision 26379-D05-2023

Enforcement Staff of the Alberta Utilities Commission
Settlement Agreement with Green Block Mining Corp.,
formerly Link Global Technologies Inc.

Proceeding 26379

Application 26379-A002

December 21, 2023

Published by the:

Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282) in Alberta
1-833-511-4AUC (1-833-511-4282) outside Alberta

Email: info@auc.ab.ca

Website: www.auc.ab.ca

The Commission may, no later than 60 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

1 Overview

1. This is a decision on an application brought jointly by Alberta Utilities Commission Enforcement staff and the respondent Green Block Mining Corp. for the approval of a settlement agreement in an enforcement proceeding, which was commenced in early 2021 after an Enforcement staff investigation of Green Block's operation of power plants without Alberta Utilities Commission approval.

2. Since the proceeding started nearly three years ago, Enforcement staff has established that Green Block contravened legislative requirements and Alberta Utilities Commission orders, and the Commission ordered administrative penalties to be paid for those contraventions. The only outstanding issue in this proceeding is the economic benefit, if any, gained by Green Block by its wrongdoing, which, if established, may result in a disgorgement order against Green Block. That issue was set to be resolved by an oral hearing scheduled for October 19-20, 2023, but the parties advised the Commission prior to that date that they had jointly prepared a proposed settlement agreement to resolve the economic benefit issue.

3. The parties subsequently filed the proposed settlement agreement with supporting joint submissions, an affidavit of a Green Block representative which addresses the financial affairs of Green Block, and responses to the Commission's information requests about the settlement agreement.

4. For the following reasons, the Commission approves the settlement agreement as proposed.

2 Background

5. In the fourth decision issued in this proceeding, Decision 26379-D04-2023, the Commission summarized the first three decisions as follows (paragraph 2):

Three Commission decisions were issued in the first phase of [this] proceeding:

- a. In Enforcement Order 26379-D01-2021, Green Block was required to immediately and in a safe manner cease operation of the Sturgeon power plant during the nighttime hours and to file with the Commission as soon as reasonably practicable a letter confirming that operations had ceased during the nighttime period.
- b. In Decision 26379-D02-2021, the Commission determined that Green Block operated two of the power plants, the Sturgeon plant and the Kirkwall plant, in contravention of the *Hydro and Electric Energy Act* and Rule 007: *Applications for Power Plants, Substations, Transmission Lines*,

*Industrial System Designations, Hydro Developments and Gas Utility Pipelines.*¹

- c. After reopening the first phase of the proceeding based on new information provided by Green Block, the Commission issued Decision 26379-D03-2022, in which it confirmed its conclusions in Decision 26379-D02-2021, but also found that Green Block had operated a third power plant, the Westlock plant, in contravention of *Hydro and Electric Energy Act* and Rule 007.²

6. The Commission notes that all the power plants at issue in this proceeding (Sturgeon, Kirkwall, and Westlock) have been shut down for many months and would require express Commission approval before operations recommenced.³

7. In Decision 26379-D04-2023, the Commission ordered Green Block to pay \$298,250 as the total administrative penalty for contraventions 1-5, within 30 business days of October 2, 2023.

8. On November 7, 2023, the Commission granted an interim stay requested by Green Block with respect to its payment of the penalty imposed in Decision 26379-D04-2023.⁴

3 The settlement agreement

9. The parties' joint submissions provide the following summary about what is included in the settlement agreement (paragraph 7):

7. The essence of the Settlement Agreement is [that] ... Enforcement staff is prepared not to have Green Block pay any Disgorgement in respect of the Contraventions, provided that the AUC approve a settlement whereby:

- a. Green Block shall file a sworn statement, together with supporting documentation, addressing certain issues relating to revenues and the accuracy of the draft, unfinalized financials for the year ended November 30, 2021 that Green Block has provided...;
- b. Green Block shall pay the [administrative penalty] set out in Decision 26379-D04-2023, plus an additional [administrative penalty] of \$48,250 ... (which reflects the [administrative penalty] sought by Enforcement staff on a contested basis in Decision 26379-D04-2023) within 30 days of the AUC approving this settlement;
- c. Green Block agrees not to conduct any further business in Alberta;
- d. Green Block shall pay Enforcement staff's actual legal expenses to a maximum of \$60,000, within 30 days of the AUC approving this settlement;

¹ Decision 26379-D02-2021: Enforcement Staff of the Alberta Utilities Commission – Allegations against Link Global Technologies Inc., Proceeding 26379, Application 26379-A001, August 19, 2021.

² Decision 26379-D03-2022: Enforcement Staff of the Alberta Utilities Commission – Allegations against Green Block Mining Corp., Proceeding 26379, Application 26379-A002, May 25, 2022.

³ Exhibit 26379-X0144, Commission ruling dated October 6, 2022, paragraph 18.

⁴ Exhibit 26379-X0195, Commission ruling dated November 9, 2023, paragraph 8.

- e. Green Block shall file its Audited Financials by December 31, 2023;
- f. If the Audited Financials differ from the Unfinalized Financials in any material respect, Enforcement staff may file an application to have the AUC commence a new proceeding against Green Block, and as part of that application shall be at liberty to seek whatever further penalties it deems to be appropriate in respect of the Contraventions, including but not limited to Disgorgement...

10. The requirement for a Green Block affidavit as part of the settlement agreement (point a) was included because there has been a lack of reliable information in this proceeding to confirm the relevant financial information of the respondent. Both parties have agreed that Green Block's audited financial statements are necessary to reliably determine any economic benefit attributable to Green Block's wrongdoing; yet there have been significant and ongoing delays in Green Block finalizing its audited financial statements. Those delays are well documented in rulings and decisions previously issued in this proceeding, and they have pushed the proceeding close to the applicable statutory limitation dates under the *Alberta Utilities Commission Act*, after which the Commission may lose its jurisdiction to impose administrative penalties against Green Block.⁵

11. In accordance with the settlement agreement, Green Block filed an affidavit, through its director, Kevin Ma, who swore to, among other things, the accuracy of information that has already been filed on the record of this proceeding, including relevant Green Block revenues, invoices, service agreements, and unaudited financial statements. The affidavit also stated that Green Block was never engaged in bitcoin mining at any facility in Alberta, either on its own or as part of any co-mining arrangement with any other entity.

12. The Commission understands from the settlement agreement (point b) that the proposed administrative penalty of \$48,250 was intended *to add to* the overall total of \$298,250 that the Commission ordered Green Block to pay in Decision 26379-D04-2023; it was not intended as a variation of the \$298,250 administrative penalty ordered for contraventions 1-5 in that decision. The order from Decision 26379-D04-2023 therefore continues to stand. The distinction here between "adding to" and "varying" is important because if the administrative penalty for contraventions 1-5 is maintained, the additional agreed-upon penalty of \$48,250 is necessarily a value that addresses the outstanding issue in this proceeding (disgorgement of any economic gains). This is confirmed in the preamble of the settlement agreement, which states (at paragraph J):

WHEREAS Enforcement staff and Green Block ... agree that a higher [administrative penalty] amount than what is set out in Decision 26379-D04-2023 is appropriate and reasonable as part of an overall settlement agreement that addresses all issues before the Parties, including Disgorgement;

13. The settlement agreement also includes within it (points e and f) a deadline (December 31, 2023) for Green Block to file its audited financial statements, as well as agreement from Green Block that Enforcement staff may start a new proceeding against Green Block in the event the audited financial statements differ from the unfinalized financials in any material respect. If Enforcement staff did so, the agreement provides that Enforcement staff would be at liberty to seek whatever further penalties it wished in respect of the contraventions

⁵ See Decision 26379-D04-2023, Penalty for Contraventions 1-5, at paragraphs 34-35.

established in this proceeding, including but not limited to disgorgement. The settlement agreement indicates that Green Block would not object to the commencement of a new proceeding on any grounds, and further indicates that Green Block would not challenge the Commission's jurisdiction or ability to hear and decide such a proceeding, including for the reason of passage of time.

14. There is an additional pathway in the settlement agreement for Enforcement staff to start a new proceeding against Green Block, to which Green Block again agrees it would not raise any objection. Paragraph 10 of the settlement agreement indicates that if Green Block does not file its audited financial statements by December 31, 2023, Green Block will be required to provide an update directly from its auditors explaining the delay and confirming that the unfinalized financial statements have not changed in a material way. Paragraph 10 indicates that if such an update and confirmation is not provided, Enforcement staff will be at liberty to bring a new proceeding.

4 The legal framework

15. The Commission's jurisdiction to consider and approve this settlement agreement is grounded in the Commission's general powers in sections 8 and 23(1)(b) of the *Alberta Utilities Commission Act* and the administrative penalty section, Section 63.

16. The Commission has consistently applied the "public interest test," which it has adopted from criminal law, to its review and consideration of negotiated settlements reached in its enforcement proceedings.⁶ The public interest test in the criminal context requires that "a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."⁷ There is a high threshold for departing from joint submissions (or negotiated settlement agreements in the regulatory enforcement context). The rationale for this is explained in significant detail in earlier Commission decisions that decided whether to approve settlement agreements between Enforcement staff and contravening parties.⁸

⁶ See Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission - Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022, paragraphs 64-68; Decision 3110-D03-2015: Market Surveillance Administrator - Market Surveillance Administrator allegations against TransAlta et al., Phase 2 - request for consent order, Proceeding 3110, October 29, 2015, paragraphs 15-21; Decision 27391-D01-2023: Enforcement Staff of the Alberta Utilities Commission, Settlement Agreement with the City of Grande Prairie, Proceeding 27391, January 20, 2023, paragraphs 16-19; and Decision 28207-D01-2023, Application For Approval of a Settlement Agreement Between the Market Surveillance Administrator, EPCOR Energy Alberta GP Inc. and 1772387 Alberta Ltd, October 11, 2023, paragraph 13. See also Bulletin 2016-10, Practices regarding enforcement proceedings and amendments to AUC Rule 001: *Rules of Practice*, March 29, 2016, paragraph 13, which sets out the obligation for Enforcement staff to safeguard the public interest in pursuing the mandate to bring forward, and in appropriate cases to settle, enforcement proceedings.

⁷ *R v Anthony-Cook*, 2016 SCC 43, paragraph 32.

⁸ See footnote 4.

5 Discussion

17. The settlement agreement provides resolution on the outstanding issue in this proceeding, which is whether Green Block should be required to disgorge any economic benefit it obtained from its wrongdoing. The parties took very different positions on that issue during the course of this proceeding. Enforcement staff had originally requested that Green Block be required to disgorge economic benefits in the amount of \$7,039,597, being the asserted economic gains of Green Block from the generation of electricity and mining of bitcoin from the Sturgeon and Kirkwall power plant sites.

18. As it turns out, the asserted claim for economic benefit may have been based on Enforcement staff's incomplete understanding of both the nature of Green Block's business operations and the revenues and profits generated by Green Block from its operations. Enforcement staff's significant disgorgement claim was further based on a disputed submission that the issue of economic benefit should be assessed on a gross as opposed to a net basis. Subsequent information provided by Green Block in this proceeding, including its most recent affidavit in which its representative has sworn to the accuracy of Green Block's unfinalized financial statements filed in this proceeding, raised the possibility that, in the circumstances, no disgorgement order should be ordered at all.

19. The Commission is satisfied that the agreed-upon \$48,250 additional penalty "is appropriate and reasonable as part of an overall settlement agreement that addresses all issues before the Parties, including Disgorgement". This additional penalty appears to have been a compromise based on many variables at play, including the uncertainty about whether audited financial statements will ever be filed in this proceeding, and the inherent risks of proceeding with the imperfect financial information currently on the record. The additional \$48,250 therefore adds certainty and finality with respect to the only remaining issue. In the Commission's view, these factors support that the settlement agreement is in the public interest, notably in light of the prolonged procedural and unnecessarily complex evidentiary history of this matter and the approach of the statutory limitation date.

20. The Commission also acknowledges the other provisions of the proposed settlement agreement, including: (1) the requirement that Green Block pay Enforcement staff's legal expenses to a maximum amount of \$60,000; (2) Green Block's representation that it will cease operations in Alberta and shall not operate in Alberta in the future under any name or in the form of any re-organized or successor corporation; (3) the deadline by which Green Block must file its audited financial statements; and (4) the ability for Enforcement staff to commence a new proceeding in the event the audited financial statements differ in any material respect from the unfinalized financial statements currently on the record, or if audited financial statements are not filed and in the event Green Block's auditors do not respond to certain questions relating to the unaudited financial statements.

21. The Commission has significant concerns about the fourth point in the paragraph above. In the Commission's view, it may be problematic that a settlement agreement that purports to be an overall settlement addressing all issues in a proceeding contains a term that permits the opportunity to reengage certain matters from that proceeding in a new proceeding. In the event Enforcement staff were to commence a new proceeding pursuant to the conditions specified in the settlement agreement, the Commission foresees a number of potential legal issues arising, most prominently the issue of *res judicata*.

22. Nevertheless, in these particular circumstances, the Commission acknowledges that there may be a legitimate basis for Enforcement staff to “seek whatever further penalties it deems to be appropriate in respect of the Contraventions, including but not limited to disgorgement.” The assessment of the validity of any such application would necessarily be undertaken by a new panel of the Commission, which would be in a position to consider the merit of that application. In any event, the settlement agreement simply allows for a new proceeding to be *commenced*. It says nothing about whether the Commission would proceed to hear the application or the ultimate resolution of any resulting proceeding. For these reasons, the discomfort the Commission has with the inclusion of these future contingent provisions can be addressed should they arise. In any case, the inclusion of these future contingent provisions does not, in the unique circumstances of this proceeding, meet the high threshold that would justify declining to approve the settlement agreement.

23. At the end of the day, the Commission’s view is that the terms of the settlement agreement allowing for the possibility that a new application may be made, taken together with the finality of the remainder of the settlement agreement and the fact that the power plants have all been shut down and will remain so pursuant to the terms of the settlement agreement, result in a settlement agreement that does not bring the administration of justice into disrepute or that is contrary to the public interest.

24. The Commission therefore approves the settlement agreement, which fully and finally addresses all issues in this proceeding.

6 Order

25. The stayed payment order from Decision 26379-D04-2023 is replaced by the following order. Pursuant to the parties' settlement agreement, the Commission hereby orders the following:

- Green Block shall pay the administrative penalty of \$298,250.00 as required by Decision 26379-D04-2023, plus an additional penalty in the amount of \$48,250 (a total of \$346,500.00), in the form of a wire transfer, certified cheque or bank draft made out to the Alberta General Revenue Fund, and delivered to the Alberta Utilities Commission within 30 days of the date of this decision.
- Green Block shall additionally pay the actual legal expenses of Enforcement staff, to a maximum of \$60,000.00, in the form of a wire transfer, certified cheque or bank draft made out to the Alberta Utilities Commission, and delivered to the Alberta Utilities Commission within 30 days of the date of this decision.

Dated on December 21, 2023.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Vice-Chair

(original signed by)

Cairns Price
Commission Member

(original signed by)

Vera Slawinski
Commission Member